

REMARKS

Claims 2-15 are pending in the Application. Claim 15 has been amended. Claim 1 is cancelled. Based on the foregoing amendments and following remarks, reconsideration and allowance of the application is respectfully requested.

Information Disclosure Statement

A supplemental information disclosure statement including the prosecution history, namely office actions and responses, of related US Patent Application S.N. 10/695,151 is submitted herewith. Applicant respectfully requests consideration of the references cited in the information disclosure statement.

Claim rejections – 35 U.S.C. §102 (e)

Claims 2-9, 11, 12, 14 and 15 stand rejected under 35 U.S.C. § 102(e) for allegedly being anticipated by U.S. Patent Publication No. 2004/0098023 (Lee). Applicant respectfully disagrees. In order to sustain a rejection under § 102(e), the respective reference must disclose each and every element of the claim, either expressly or inherently. Applicant respectfully submits that Lee cannot support the § 102(e) rejection because it does not disclose each and every element of the rejected claims, as amended.

Lee discloses a vaso-occlusive device comprising a core member and fibrous structure coupled to the core member, wherein a bioactive material may be used to coat or is otherwise included in the composition of the core member. Independent claim 15, however, recites an active element extending axially through the lumen defined by a vaso-occlusive member, the active element comprising an agent carrier that expands or contracts when placed in a body, wherein the expansion or contraction of the active element causes the occlusive member to substantially retain its shape when deployed in a

body cavity.

Even assuming for purposes of argument that the fibrous structure (14) surrounding the core member (12), as shown in Figs. 6-7 of Lee, could be considered the claimed occlusive member defining an axial lumen, and the core member (12) could be considered the claimed “active element comprising bioactive materials” (which arrangement is not conceded by Applicant as an appropriate reading, since the core member (12) is clearly the occlusive member in Lee), this arrangement would still not read on claim 15, since the core member (12) does not *expand or contract* when placed in the body *to cause the fibrous structure (14) to retain its shape*. The fibrous material (14) in the Lee device merely clings in some fashion to the core member (12); it does not take on or retain any particular secondary shape when deployed in the body.

In particular, the claimed devices requires a separate active element that extends axially through a lumen of an occlusive device, and no such assembly is disclosed in Lee.

For at least these reasons, independent claim 15, as well as dependent claims 2-9, 11, 12 and 14, are believed patentable over Lee.

Claim rejections – 35 U.S.C. §103 (a)

Claims 10 and 13 stand rejected under 35 U.S.C. § 103(a) for allegedly being unpatentable over Lee, in either view of U.S. Patent No. 6,953,465 (“Dieck”) and U.S. Patent Publication No. 2002/0183783 (“Shaddock”), or U.S. Patent No. 5,695,469 (“Segal”) or U.S. Patent No. 5,456,667 (“Ham”). However, Applicant respectfully points out that Lee does not qualify as “prior art” under 102(e) for the purposes of sustaining a rejection under 103(a). In particular, **the subject matter of Lee and the above-identified application were, at the time the above-identified application was made, owned by or subject to**

an obligation of assignment to the same entity (namely, Boston Scientific Scimed, Inc., formerly Scimed Life Systems, Inc.). Therefore, Lee cannot be properly combined with any of Dieck, Shaddock, Segal, or Ham for purposes of sustaining a rejection under 103(a), and Applicant respectfully requests that the rejection of claims 10 and 13 under 35 U.S.C. §103(a) be withdrawn.

CONCLUSION

For the reasons set forth above, Applicant respectfully submits that currently pending claims are patentable over the cited prior art. A notice of allowance is respectfully requested.

If there are any questions concerning this amendment and response, please contact the undersigned at the number below.

Respectfully submitted,
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